

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 5/4/2022
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:
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	:
-v -	:
ETHAN PHELAN MELZER,	:
	:
Defendant.	:
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1:20-cr-00314-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

On May 4, 2022 the Court held a pretrial conference. At the conference, the Court ruled on the parties' motions *in limine*. Dkt. Nos. 90 and 92.

For the reasons stated on the record, Defendant's motion for a bill of particulars is denied. Defendant's motion *in limine* requesting attorney conducted-voir dire is also denied. The Court will resolve Defendant's motion to preclude testimony from the Government's proposed expert witness, Dr. Peter Simi, at or after the *Daubert* hearing scheduled for May 24, 2022 at 10:00 a.m.

For the reasons stated on the record, the Government's motions *in limine* are granted in part and denied in part. The Court determines that, based on the information currently available, the probative value of the materials referred to by the Government as the "Jihadist Materials" and the "O9A Materials" is not substantially outweighed by risk of unfair prejudice or the other concerns articulated in Federal Rule of Evidence 403. The Court also determines that, at this point, it is likely that the Government will be able to prove by a preponderance of the evidence that a conspiracy existed between Defendant, CC-1, and CC-3 as required to admit their statements pursuant to Federal Rule of Evidence 801(d). However, the Government has not provided a sufficient basis to admit statements by CC-1 and CC-3 as statements against interest under Federal Rule of Evidence 804(b)(3). At this point, the Court will not preclude, under Federal Rule of Evidence 403, the

admission of Defendant's statement regarding his lack of patriotism made to Individual-1. The Court will also refer the military base described in the parties' briefs as the "Military Base" at trial, and will prevent the disclosure of the jurors' names and other identifying information to the public.

As further discussed during the pretrial conference, the parties are directed to submit a joint letter setting forth their positions as to whether the use of a jury questionnaire would be appropriate and preferable in this case no later than May 13, 2022. In that joint letter, the parties should also indicate whether there are any issues regarding the phrasing or scope of the proposed voir dire questions to be provided by the Court.

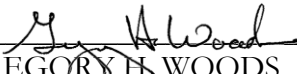
Further, as discussed during the conference, the parties are ordered to meet and confer and submit any proposed limiting instructions to the Court no later than June 3, 2022. If the parties cannot agree on any particular limiting instruction, they should submit a joint letter along with that submission setting forth their respective positions.

In addition, and as discussed during the conference, no later than June 21, 2022, the parties are ordered to submit a joint letter setting forth their respective positions regarding any statements that the Defendant seeks to admit pursuant to the rule of completeness. If there is no disagreement regarding the statements Defendant seeks to admit pursuant to that rule, the parties need not file a joint letter.

The Clerk of Court is directed to terminate the motions pending at Dkt. Nos. 85, 90, and 92.

SO ORDERED.

Dated: May 4, 2022  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge